MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2019 / 2020

UCY 4612 – CONVEYANCING PRACTICE

(All Sections / Groups)

19 OCTOBER 2019

Reading Time: 2.30 p.m. – 2.45 p.m.
(15 Minutes)
Answering Time: 2.45 p.m. – 5.45 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 4 Questions only.

3. Attempt FOUR questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPIES of (i) Legal Profession Act 1976; (ii) National Land Code 1965; (iii) Housing Development (Control & Licensing) Act 1966 (together with Rules and Regulations incorporating latest amendments); (iv) Strata Titles Act 1985, Rules & Order/Strata Titles (Amendment) Act 2013; and (v) Strata Management Act 2013 & Regulations into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

Assuming you are the Chairperson of the State Bar Disciplinary Board Committee, you have received a complaint letter from Mdm. Mary Minnie Cat, an *Aussie*, against a conveyancing solicitor, namely Ms. P.Y. Lam (hereinafter referred to as 'the Solicitor').

Dear Mr. Chairperson,

I wish to lodge a complaint against Ms. P.Y. Lam from M/S P.Y. Lam & Partners. She represented me in a sale and purchase transaction in which I have purchased a double storey bungalow house from one Mr. Ling, a Malaysian. Mr. Ling purchased this property from SunSuria Developer Sdn. Bhd. ('the Developer') 10 years ago. The purchase price for the said property as stated in the sale and purchase agreement between me and Mr. Ling is RM2.5 million only. I have paid the 10% of the purchase price to the Solicitor. The remaining balance of RM2.25 million only has been deposited with the Solicitor as stakeholders after one month of signing the sale and purchase agreement. I requested her to place the sum of RM2.25 million only in her firm client's account. However, at the end of the transaction, she never paid me any interest of the said money. At the same time, the Solicitor has forwarded 7% of the purchase price to Inland Revenue Board ('IRB') as retention sum of real property gains tax.

Meanwhile upon conducting a title search on the said land, the Solicitor discovered that there is a registrar's caveat on the said land that had been lodged eight years ago. However, the Solicitor advised me that that the caveat will not restrict the presentation of the Memorandum of Transfer from Mr. Ling to me as all caveats will lapse after the duration of six years. Upon advise by the Solicitor to save cost, I have agreed not to lodge any private caveat on the said property. I have also requested the Solicitor to provide me rebate on the professional fees. However, she said this transaction is subject to 'no discount rules' by Bar Council Malaysia. I believe her statement.

Upon presentation of the Memorandum of Transfer in my favour, the land office/registry rejected the registration in my favour as they noticed that I have yet to obtain the state authority's consent.

In view of that I have paid the purchase price to the Solicitor and requested for vacant possession to the said property. To my surprise, there is a tenant who is staying in the said property and refused to move out despite of numerous notices to quit.

I am very upset now and kindly take the necessary action against the Solicitor.

Continued...

The contents of the said complaint letter are reproduced as follows:

(a) Do you think Ms. P.Y. Lam is liable for disciplinary action by the State Bar? Analyse your answer based on the Bar Council's Conveyancing Practice Rulings and Checklist, the relevant provisions of statute and decided cases (if any).

(20 marks)

(b) Briefly explain whether the total retention sum payable to IRB is correct or not. You are required to explain your answer in accordance with latest amendment in the provisions of Real Property Gains Tax 1976.

(5 marks)

(Total: 25 marks)

QUESTION 2

KC HO SDN. BHD. (Company No. 12345-A), a private limited company incorporated in Malaysia under the Companies Act 2016 had purchased a unit of high rise condominium known as Parcel No. K-10-10A, within Level No. 10 of Building No. Block K measuring approximately 2,500 square feet in area and bearing postal address Lot K-10-10A, Melaka Beautiful Condominium, Jalan Berjaya, 75450 Melaka together with two units of car park within a housing development known as MELAKA BEAUTIFUL CONDOMINIUM erected over land held under Leasehold Master Title PN 54321 Lot 12345, in the Town of Melaka, District of Melaka and State of Melaka (hereinafter referred to as 'the said Property') for the purchase price of RM2,500,000-00 only from Melaka Berjaya Developer Sdn. Bhd. ('MBDSB') in February 2013. The separate subdivided strata title to the said Property has yet to be issued by the relevant land office/registry. KC HO SDN. BHD. financed purchase by assigning the said Property to Bank Kaya Bhd. ('BKB') for a housing loan. There remains an outstanding sum of RM1,500,000-00 only under the said loan.

Recently, Mr. Thoy Kam Koi, a *Myanmarese* visited Melaka during 'Visit Melaka Festival 2019' and he saw an advertisement selling the said Property at RM3,000,000-00 only. He is interested to purchase the said Property and as such he contacted Ms. Jasmine, the company secretary of KC HO SDN. BHD. The Vendor, KC HO SDN. BHD. contracted to sell the said Property to Mr. Thoy Kam Koi for the sum of RM3,000,000-00 only in September 2019. Mr. Thoy Kam Koi intends to apply to Bank Cantik Bhd. ('BCB') for a loan to finance the purchase.

Continued...

KC HO SDN. BHD. has their own solicitors. Mr. Thoy Kam Koi has appointed you as his solicitor in this sale and purchase together with loan transactions. As the solicitor for Mr. Thoy Kam Koi, explain to him the relevant procedure to complete the sale and loan transactions and the required documentation. Would your answer be different if KC HO SDN. BHD. has also entered into a Tenancy Agreement with Ms. Pauline which will expire on September 2020?

(Total: 25 marks)

QUESTION 3

Peniaga approached Pembangunan Bank Bhd. ('PBB') for a business loan to develop a plot of land named Greenland for housing development. He offered to charge the Greenland as security for the loan. He informed PBB that Greenland had formerly been charged to Bank Satu Bhd. ('BSB'). The loan had now been settled and was ready for the discharge of charge to be completed. As proof he showed an alleged letter and documents from BSB forwarding him the original title, duly executed discharge of charge and duplicate copy of charge. Based on this PBB approved a loan of RM5 million on the security of Greenland. They appointed Mr. Peguam, an advocate and solicitor ('Peguam') to attend to the loan documentation. Peguam duly conducted a title search which showed the only encumbrance being a charge in favour of BSB. Peguam then proceeded to present the discharge of charge by BSB together with the new charge in favour of PBB. The documents were duly registered by the land Office and subsequently PBB released the full amount of the loan of RM5 million.

A month later PBB was informed by BSB that they had not executed a discharge of charge in respect of Greenland. PBB also discovered that the title deed given to them by Peniaga was forged and that the original title deed was still in the custody of BSB. Further, BSB had lodged a police report and applied to Court to cancel the discharge of charge presented by Peguam on the grounds that the form was forged and to reinstate the BSB's charge on Greenland. Peniaga has since disappeared and cannot be traced.

PBB now sues Peguam for negligence and the recovery of RM5 million.

Discuss Peguam's liability with reference to cases and the Bar Council's Conveyancing Guidelines and Checklists. What could Peguam have done to safeguard himself and PBB against such fraudulent land scams?

(Total: 25 marks)

Continued...

Answer EITHER Question 4 (a) OR Question 4 (b)

QUESTION 4 (a)

Aladin saw an advertisement by Sempurna Development Sdn. Bhd. ('SDSB') for sale of semi-detached houses at Taman Sempurna ('the Project'). When Aladin enquired he was informed by the Sales Manager of SDSB that the Project was scheduled for completion in eight months. Furthermore, individual titles had already been obtained for all the lots under the Project. Satisfied, Aladin executed a Sale and Purchase Agreement ('SPA') for a semi-detached unit under the format of a Schedule H statutory agreement. He noticed that the time for completion was stated as 36 months and not eight months as was represented to him. However, he did not question this and paid 10% of the purchase price of RM800,000-00.

Eight months after the execution of the SPA, Aladin realised that the construction work progress was very slow and SDSB would not even be able to complete the Project at the end of a year. Meanwhile SBSD had issued a notice requesting progress payment as per the terms of the SPA. Aladin refused to make the payment. Consequently SDSB issued a Notice of Termination of the SPA to Aladin of breach of contract and forfeiture of all payments made to date.

Aladin who is unhappy consults you on the legal position. Advise Aladin on his legal rights and remedies if any.

(Total: 25 marks)

OR

QUESTION 4 (b)

Sunshine Developer Sdn. Bhd. ('SDSB') purchased all that piece of land held under a master title HSD 1234 Daerah of Melaka Tengah ('the said land') more particularly described as Taman Sunshine at Ayer Keroh in Melaka, to build apartments. However, title is still registered under the name of Pro Prei Tor and is pending the issue of individual strata title. SDSB have advertised 5 blocks of 7 storey apartments for sale to the public. In April 2019, Jasmin bought a unit described as Parcel No. 7, 7th floor Block Melor, Taman Sunshine for the purchase price of RM660,000-00. Jasmin requests you to act for her on the sale and purchase transaction. She has paid 2% of the purchase price and has applied to Green Bank Bhd. for a housing loan to finance the payment of the balance of the purchase price. You are informed by SDSB that they have charged the said land to Eco Bank Bhd. and that there is an outstanding loan. Jasmin's financier, Green Bank Bhd. would have to pay the redemption sum to Eco Bank Bhd. to perfect the sale and assignment of the abovesaid property.

Continued...

You are required to: -

(i) Draft a letter of enquiry from Green Bank Bhd.'s Solicitors to Purchaser's Solicitors.

(12 marks)

(ii) Draft a Letter of Undertaking from Eco Bank Bhd. to Green Bank Bhd. to provide relevant undertaking.

(13 marks)

(Total: 25 marks)

End of Page